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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SETH D. HARRIS, Acting Secretary of  
Labor, United States Department of  
11 Labor,

12 Plaintiff,

13 v.

14 QING XING, INC., a corporation dba  
Super Buffet; SHI XING ZHANG,  
15 individually; XIAO BIN LIN aka JENNY  
LIN, individually; and YUN SUN,  
16 individually,

17 Defendants.

CASE NO. C12-5720MJP

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

18  
19 This matter comes before the Court on the motion for summary judgment filed by  
20 Plaintiff Department of Labor. (Dkt. No. 22.) Having reviewed the motion, Defendants' response  
21 (Dkt. No. 25), and all related filings (Dkt. Nos. 23, 24, 26, and 27), the Court GRANTS  
22 Plaintiff's motion and ORDERS that summary judgment is hereby entered in favor of Plaintiff.  
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**Background**

Plaintiff, the U.S. Department of Labor, brings this action against Defendants Qing Xing, Inc., Shi Zing Zhang, Xio Bin Lin, and Yun Sun, alleging numerous violations of the Fair Labor Standards Act of 1938 (the "Act"), 29 U.S.C. § 201 et seq. (Dkt. No. 1 at 2.) Defendants, which operates a Chinese restaurant in Dupont, Washington, is accused of violating the Act by failing to pay its employees the minimum wage, failing to provide overtime pay for hours worked in excess of 40 hours per week, and failing to keep accurate records for all hours worked by each employee. (Dkt. No. 22 at 2.)

Defendants agree that Super Buffet is an employer within the meaning of the Act and that its employees were engaged in interstate commerce within the meaning of the Act. (Dkt. No. 25 at 3-4.) However, Defendants assert that Plaintiff's calculations about minimum wage and overtime wages are incorrect, because "[t]he computation does not include the monthly rent and food costs for employees that was paid for by the Defendants." (*Id.* at 7.) Defendants also deny that they failed to keep accurate payroll records for the majority of their employees. (*Id.* at 9.)

Plaintiff requests that the Court grant summary judgment on the issues of Defendants' liability under sections 6, 7, and 11 of the Act, 29 U.S.C. §§ 201-219, enjoin Defendants from future violations of the Act, and award backwages and liquidated damages as provided by the Act. (Dkt. No. 22 at 1-2.) Plaintiff provides two documents in support of its motion. First, Plaintiff provides a copy of the requests for admission that it served on Defendants March 19, 2013. (Dkt. No. 23-1.) Plaintiff asserts that, pursuant to Federal Rule of Civil Procedure 36(a)(3), the subject matter in those requests must be deemed admitted because Defendants did not provide an answer within 30 days. (Dkt. No. 23.) Plaintiff also provides the declaration of Department of Labor Wage Hour investigator Ming Sproule, which describes the wage and hour



1 violations in detail, computes back wages, and asserts that Defendants knew about the Act's  
 2 requirements because they were provided with a Chinese-language version of a Department of  
 3 Labor Fact Sheet and because one of the restaurant's owners, Ji Li, admitted he knew employers  
 4 had to pay minimum wages and overtime. (Dkt. No. 24.)

5 Defendants assert that they did not respond to Plaintiff's requests for admission because a  
 6 settlement had been reached in principle and because Defendants believed that "discovery was  
 7 no longer an issue since we had come to an agreement on the settlement and were just waiting on  
 8 my client to secure the loans." (Dkt. No. 27 at 2.) Defendants also provide a declaration from  
 9 Xiao Bin Lin, who is identified as a 35% owner of Qing Xing, Inc., stating that Qing Xing, Inc.  
 10 paid employees the correct minimum wage and that the company never received the DOL fact  
 11 sheet. (Dkt. No. 26.)

## 12 Discussion

### 13 A. Legal Standard

14 Federal Rule 56(a) provides that the court shall grant summary judgment if the movant  
 15 shows that there is no genuine dispute as to any material fact and the movant is entitled to  
 16 judgment as a matter of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S.  
 17 242, 247 (1986). In determining whether a factual dispute requiring trial exists, the court must  
 18 view the record in the light most favorable to the nonmovant. Id. at 255. All material facts  
 19 alleged by the non-moving party are assumed to be true, and all inferences must be drawn in that  
 20 party's favor. Davis v. Team Elec. Co., 520 F.3d 1080, 1088 (9th Cir. 2008). If the moving party  
 21 satisfies its burden, the burden shifts to the non-moving party to come forward with "specific  
 22 facts showing that there is a genuine issue for trial." Matushita Elec. Indus. Co. v. Zenith Radio

1 Corp., 475 U.S. 574, 587 (1986). “Where the record taken as a whole could not lead a rational  
2 trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Id.

3 B. Requests for Admission

4 The matters that were the subject of Plaintiff’s March 19, 2013 requests for admission are  
5 deemed admitted for the purposes of this motion because Defendants failed to respond to  
6 Plaintiff’s discovery request. Federal Rule 36(a) states that a matter is deemed admitted “unless,  
7 within 30 days after service of the request . . . the party to whom the request is directed serves  
8 upon the party requesting the admission a written answer or objection addressed to the matter,  
9 signed by the party or by the party’s attorney.” Fed. R. Civ. P. 36(a). Once admitted, the matter  
10 is “conclusively established unless the court on motion permits withdrawal or amendment of the  
11 admission” pursuant to Rule 36(b).

12 Here, Plaintiff shows that it served the requests for admission on March 19, 2013. (See  
13 Dkt. No. 23 at 2.) Defendants’ counsel asserts that it was his “understanding that the discovery  
14 was no longer an issue since we had come to an agreement on the settlement and were just  
15 waiting on my client to secure the loans.” (Dkt. No. 27 at 2.) But this argument fails for two  
16 reasons. First, a review of the email correspondence between Plaintiff’s counsel and Defendants’  
17 counsel shows it is obvious that no agreement was ever reached. (See Dkt. No. 27-1 at 1  
18 (Plaintiff’s counsel states that if Defendants can secure a loan for \$400,000 to pay a settlement,  
19 he would “recommend that Wage Hour accept your offer”).) This agreement was never  
20 consummated because Defendants never obtained the loan, and because Plaintiff’s counsel only  
21 stated he would “recommend” his client accept the settlement, not that the matter would be  
22 settled. (Id.) Second, Defendants offer no basis for the Court to conclude that these settlement  
23 negotiations somehow relieved it of the obligation to respond to outstanding discovery requests.



1 As the Ninth Circuit has explained, "It is undisputed that failure to answer or object to a  
 2 proper request for admission is itself an admission: the Rule itself so states." Asea, Inc. v.  
 3 Southern Pacific Transp. Co., 669 F.2d 1242, 1245 (9th Cir. 1982). Federal Rule 36(b) states that  
 4 "[a] matter admitted under this rule is conclusively established unless the court, on motion,  
 5 permits the admission to be withdrawn or amended." Fed. R. Civ. P. 36(b). Here, Defendants  
 6 filed no motion asking the Court to withdraw its admission, so the matters in Plaintiff's requests  
 7 for admission are deemed conclusively established. (Dkt. No. 23-1.) These established facts  
 8 include, among others, that every individual listed in Exhibit A of the Complaint was an  
 9 employee of Defendants, that wait persons at the Dupont Super Buffet restaurant worked for tips  
 10 only, that employees worked from 10:00 a.m. to 10:00 p.m. six days a week, and that the gross  
 11 volume of Defendants' sales exceeded \$500,000 annually from 2008 to 2011. (Id. at 13-14.)

#### 12 C. FLSA Violations

13 Plaintiff, by citing to materials in the record, shows that there is no genuine issue of  
 14 material fact that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c). The Fair  
 15 Labor Standards Act requires employers to pay employees at least the federal minimum wage for  
 16 all hours worked, pay at least one and one half times the minimum wage for all hours worked in  
 17 excess of 40 in a work week, and maintain certain records related to the employment of  
 18 employees. 29 U.S.C. §§ 206(a), 207(a), and 211(c). Failure to comply with these requirements  
 19 exposes an employer to injunctions and payment of wages due plus liquidated damages. 29  
 20 U.S.C. §§ 216-217.

21 In the absence of accurate records kept by the employer in accordance with 29 C.F.R. §  
 22 516.2, back wages for hourly workers are established through the methodology found in the  
 23 Wage Hour regulations at 29 C.F.R. § 778.110. Here, the Wage Hour investigator determined  
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1 that minimum wage violations resulted in back wages totaling \$430,824.18. (Dkt. No. 24 at 4.)  
2 The investigator computed this amount using the standard formula of dividing total wages by the  
3 total hours worked, then subtracting the regular rate from the applicable federal minimum wage  
4 to determine the minimum wage due per hour. (Id.) The investigator also found that \$524,706.87  
5 in overtime back wages is owed. (Id. at 5.) The investigator computed this amount by subtracting  
6 40 hours from the total hours worked each week to determine overtime hours, multiplying the  
7 overtime hours by the minimum wage, and multiplying the straight time paid by 0.5. (Id.) The  
8 investigator also found that Defendants' "payroll, time worked and basis [sic] employee  
9 information was incomplete, inaccurate or non-existent as to rates of pay, amounts paid,  
10 employment periods, job classifications, starting/ending times and number of days worked and  
11 what the employees worked." (Id. at 5.) The investigator gathered this information by  
12 interviewing 13 employees and conducting surveillance of the Dupont Super Buffet restaurant on  
13 two mornings and one evening. (Id.)

14 Defendants attack this calculation, stating that the amount of money spent by the  
15 Defendants on housing and food for the employees has not been figured into the calculations to  
16 determine whether or not the employees were paid minimum wage and overtime wage. (Dkt. No.  
17 25 at 7.) But Defendants provide no authority supporting its assertion that housing or food costs  
18 should be taken into account under the Act, and it provides no detail regarding these supposed  
19 expenditures. (Id.) Plaintiff has satisfied its burden under Rule 56, and Defendants have failed to  
20 provide "specific facts showing that there is a genuine issue for trial." Matushita, 475 U.S. at  
21 587.

22 Plaintiff also demonstrates that no genuine issue of fact exists as to whether Defendants  
23 willfully violated the Act. An action to recover back wages under the Act may extend three years  
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1 prior to the date of the applicable tolling agreement of filing of a Complaint where the violations  
2 of the Act were willful. 29 U.S.C. § 255(a). An employer willfully violates the Act “where the  
3 employer knew that its conduct was prohibited by the Act or showed reckless disregard for the  
4 requirements of the Act.” 29 C.F.R. § 578.3(c). Here, Plaintiff provides a declaration of an  
5 investigator stating that Defendants were provided with Chinese-language versions of the DOL  
6 fact sheet “Restaurants and Fast Food Establishments Under the FLSA,” which explains the  
7 FLSA requirements. (Dkt. No. 24 at 6.) The declaration also states that Defendants’ accountant  
8 provided them with Chinese versions of other fact sheets about the FLSA. (*Id.*) This strongly  
9 supports a finding that Defendants knew the requirements of the Act. In response, Defendants  
10 argue that “[j]ust because Mr. Li was an employee at a Chinese restaurant does not mean that he  
11 knows the correct and legal ways to run a business.” (Dkt. No. 25 at 10.) Defendants’ declaration  
12 states that “Qing Xing, Inc., [sic] has never received a Chinese version of a DOL fact sheet,” but  
13 it does not assert that individual Defendants did not receive the fact sheet, or that Defendants’  
14 attorney and accountant provided fact sheets. (Dkt. No. 26.) Defendants offer no specific facts  
15 showing that they were unaware of the requirements of the Act. Without more, these bare  
16 assertions are insufficient to defeat summary judgment. *See Matsushita*, 475 U.S. at 587.

17 D. Liquidated Damages

18 Lastly, Plaintiff is entitled to liquidated damages in this matter. The Act provides that  
19 “[t]he Secretary may bring an action in any court of competent jurisdiction to recover the amount  
20 of the unpaid minimum wages or overtime compensation and an equal amount as liquidated  
21 damages.” 29 U.S.C. § 216(c). Once a plaintiff establishes liability for unpaid wages, double  
22 damages are the norm. *Alvarez v. IBP, Inc.*, 339 F.3d 894, 910 (9th Cir. 2003). Here, the  
23 undisputed material facts conclusively demonstrate Defendants’ violations of the minimum wage  
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1 and overtime provisions of the Act. Therefore, Plaintiff is entitled to liquidated damages in an  
2 amount equal to the backwages owed.

3 **Conclusion**

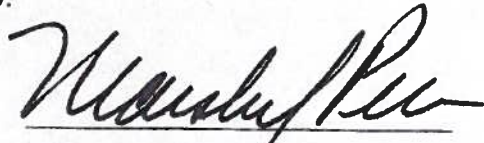
4 Plaintiff's motion for summary judgment is GRANTED. The Court grants Plaintiff the  
5 relief requested in Plaintiff's complaint, including a permanent injunction enjoining Defendants  
6 from violating the provisions of the Act, and damages in the amount of \$955,531.05 representing  
7 backwages for the individuals on Exhibit A to the Complaint, as well as \$955,531.05 in  
8 liquidated damages due under the Act.

9 Defendants are required to make all payments referenced above no later than 30 days  
10 from the entry of this order. Payment is to be made via regular payroll checks to each individual  
11 employee and Defendants are responsible for calculating and deducting all applicable  
12 withholdings. Checks shall be made payable in the alternative to the named employee or  
13 "USDOL" and shall be delivered by Defendants directly to the individual. For any individuals  
14 whose address is unknown to Defendants, Defendants shall send the check directly to the  
15 Department at the address below. For all other individuals, Defendants shall send a copy of the  
16 check, along with a statement of any deductions taken to:

17 US Department of Labor, Wage and Hour Division  
18 300 Fifth Avenue, Suite 1125  
19 Seattle, WA 98104

20 The clerk is ordered to provide copies of this order to all counsel.

21 Dated this 11<sup>th</sup> day of September, 2013.

22   
23 Marsha J. Pechman  
24 United States District Judge